

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF REVENUE

In the Matter of the Revocation
of the Real Estate License of
Timothy Patrick Wittrock.

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Kathleen D. Sheehy, Administrative Law Judge, on May 15, 2003, at the Office of Administrative Hearings in Minneapolis. The record closed that day.

Wayne L. Sather, Esq., Minnesota Department of Revenue, Mail Station 2220, 600 North Robert Street, St. Paul, MN 55146-2220, appeared for the Department of Revenue (Department).

Timothy Patrick Wittrock, 5835 Chastek Way, Minnetonka, MN 55435-6602, appeared on his own behalf.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Revenue will make the final decision after a review of the record. The Commissioner may adopt, reject, or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner of Revenue shall not be made until this report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this report to file exceptions and present argument to the Commissioner of Revenue. Parties should contact Wayne L. Sather, Attorney, Legal Services Section, Mail Station 2220, St. Paul, MN 55146-2220 or 651/296-8228. The record closes upon the filing of exceptions to the report, or upon the expiration of the deadline for doing so. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUE

Should Mr. Wittrock's real estate license be revoked for failure to pay delinquent taxes, penalties and interest and for failure to file tax returns?

The Administrative Law Judge concludes Mr. Wittrock's license should be revoked.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Timothy Wittrock is a real estate agent. The income he derives from this business is his family's sole source of support.
2. Mr. Wittrock's large family has suffered from significant health problems over the past two years that have impaired both his ability to earn income and to file tax returns. At the time of the hearing, Mr. Wittrock owed \$4,676.58 in past due taxes, penalties, and interest for tax year 1999, and he had failed to file tax returns for 2000 and 2001.
3. At the time of the hearing, Mr. Wittrock had not entered into a repayment agreement with the Department.
4. The Department issued a Notice of Intent to Revoke License on January 24, 2003.^[1] Respondent requested a hearing on February 24, 2003.^[2] The Notice of and Order for Hearing in this matter were issued on April 10, 2003.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Department and the Administrative Law Judge have authority to consider the issues set out in the Notice of and Order for Hearing and to take the action proposed under Minn. Stat. §§ 14.50 and 270.72, subd. 1.
2. The Department gave proper notice of the hearing in this matter to the Respondent and has complied with all relevant substantive and procedural requirements of law and rule.
3. Respondent owes the Department, as of the date of the hearing, \$4,676.58 in taxes, penalties, and interest. Respondent has failed to file income tax returns for 2000 and 2001.
4. Minn. Stat. § 270.72, subd. 1, provides as follows:

The state or a political subdivision of a state may not issue, transfer, or renew, and must revoke a license for the conduct of a profession, occupation, trade or business if the commissioner notifies the licensing authority that the applicant owes the state delinquent taxes, penalties, or interest. The commissioner may not notify the licensing authority unless the applicant taxpayer owes \$500 or more in delinquent taxes or has not filed returns. If the

applicant taxpayer does not owe delinquent taxes but has not filed returns, the commissioner may not notify the licensing authority unless the taxpayer has been given 90 days' written notice to file the returns or show that the returns are not required to be filed.

5. As of the date of the hearing, the Respondent owed more than \$500 in unpaid taxes, and he and the Department had not entered into a repayment plan.

6. The Department has met the statutory requirements for notifying the Commissioner of Commerce that Respondent's real estate license should be revoked.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of Revenue issue a Notice of License Revocation to the Minnesota Department of Commerce indicating that the Department of Commerce must revoke the Respondent's real estate license.

Dated this 13th day of June, 2003.

/s/ Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Tape Recorded, one tape.

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve the final decision upon each party and the Administrative Law Judge by first-class mail. If the Commissioner fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.62, subd. 2a, this report becomes a final decision. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

MEMORANDUM

Respondent does not dispute the amount currently owed to the Department, although he maintains he is in the process of filing amended returns for years prior to 1999 that would reduce the amount presently owed. The Department indicated that it was interested in working out a payment schedule with Mr. Wittrock, but that he must file the missing returns before any payment plan can be discussed. The Administrative Law Judge is issuing this Recommendation in the event that no repayment plan is worked out between the parties.

K.D.S.

^[1] Ex. 5.

^[2] Ex. 3.